



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2004

Ms. Deena Wallace  
Associate General Counsel  
The Texas A & M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2004-5082

Dear Ms. Wallace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203868.

The Texas A & M University—Corpus Christi (the “university”) received a request for “the permanent mailing address information for all admitted freshman students that have less than 30 college level hours, including first time freshmen,” as well as e-mail addresses for these students. You state that the requestor “was provided with an Excel Worksheet in digital format containing the requested information, except for e-mail addresses.” You contend that the e-mail addresses at issue are excepted from disclosure under sections 552.026 and 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 (“FERPA”), section 1232g of title 20 of the United States Code, and under section 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, as you acknowledge, the university has not sought an open records decision from this office within the ten business day time period prescribed by section 552.301 of the Government Code, nor have you submitted the information required under section 552.301(e) within the fifteen business day time period prescribed by that section. *See* Gov’t Code § 552.301(a), (b), (e). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ’g Co.*, 673 S.W.2d 316, 323

(Tex. App.–Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, a compelling reason exists when some other source of law makes the information confidential or when third party interests are at stake. *See* Open Records Decision No. 630 (1994). Because your claims under FERPA and section 552.137 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these provisions.

You have provided two lists of responsive e-mail addresses for review: a list of e-mail addresses of freshman students who have attended the university, submitted as Exhibit F, and a list of e-mail addresses of incoming freshmen students who have not yet attended the university, submitted as Exhibit G. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. You contend that the e-mail addresses in Exhibit F are confidential under FERPA. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. *See* 20 U.S.C. § 1232g(b)(1), (d) (for student eighteen years of age or attending institution of postsecondary education, permission or consent required of and rights accorded to parent under FERPA are required of and accorded to student); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information).

Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov’t Code § 552.026. “Education records” under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution, or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). This office has determined that education records must generally be withheld under FERPA to the extent reasonable and necessary to avoid personally identifying a particular student. *See* Open Records Decision Nos. 332 (1982), 206 (1978). However, an educational agency or institution may release directory information, in compliance with procedures specified under FERPA. *See* 20 U.S.C. § 1232g(a)(5)(B) (agency or institution making public directory information must give notice of categories of

information designated as directory information and allow reasonable time for student to inform agency or institution not to release any or all of the information without consent).

Under FERPA, "directory information" includes a student's name and address, but does not include e-mail addresses. *See* 20 U.S.C. § 1232g(a)(5)(A). You state that the university has not designated e-mail addresses as a category of directory information. Thus, we agree that the e-mail addresses in Exhibit F do not consist of directory information under FERPA, and must be withheld as education records of the students at issue pursuant to section 552.101 of the Government Code in conjunction with FERPA.

Next, you contend that the e-mail addresses of incoming freshmen contained in Exhibit G are excepted under section 552.137 of the Government Code.<sup>1</sup> Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

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<sup>1</sup> As you acknowledge, records of incoming students who have not been in attendance at the university are not education records of "students" for purposes of FERPA. 20 U.S.C. § 1232g(a)(6).

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body. You advise that the incoming freshmen at issue have not consented to the release of their e-mail addresses. Thus, we determine that the university must generally withhold the e-mail addresses in Exhibit G pursuant to section 552.137 of the Government Code. However, e-mail addresses in Exhibit G that are the work e-mail addresses of public employees are not excepted under section 552.137 and must be released.

In summary, the university must withhold the e-mail addresses at issue in Exhibit F pursuant to section 552.101 of the Government Code in conjunction with FERPA. With the exception of the work e-mail addresses of public employees, the university must withhold the e-mail addresses in Exhibit G pursuant to section 552.137 of the Government Code. The work e-mail addresses of public employees contained in Exhibit G must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 203868

Enc: Submitted documents

c: Mr. Erik Cruz  
The Islander Bookstore  
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(w/o enclosures)